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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,145	10/30/2003	Yasushi Enguchi	09656/0200092-US0	1466
7278	7590	09/22/2004	EXAMINER	
DARBY & DARBY P.C.			BAHTA, ABRAHAM	
P. O. BOX 5257			ART UNIT	
NEW YORK, NY 10150-5257			PAPER NUMBER	

1775

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/699,145	Applicant(s) ENGUCHI, YASUSHI	
	Examiner Abraham Bahta	Art Unit 1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Claim Objections***

The following suggestions are made for claims 1-3, 5 and 11.

In claim 1, line 4 change "release" to --releases--.

In claim 2, line 2 change "can be" to --are--.

In claim 3, line 5 delete "of".

Add period (.) at the end of claim 5.

In claim 11, line 2 delete ",."

### ***Claim Rejections - 35 USC § 112***

Claims 2-3, 8-9 and 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2, line 5 recites "effective diameter of an aromatic substance". It is not clear how the aromatic substance can have diameter.

In claim 3, the phrase "by evaporation" is not clear. It is not clear how the fragrance is released. Is the pore open?

In claim 8, line 2 the phrase "connected member" lacks antecedent basis.

Claim 9, recites "at least one of said injection hole and said exhaust hole, which is closed"; however, it is not clear if the injection or the exhaust hole or both are closed. In the claim line 4, what does pass mean? Does it mean release?

In claim 12, line 2 the phrase "with another parts" is confusing. It is not clear what is meant by "with another parts."

Claim 13 is confusing. It is requested the phrase on lines 3-4 "to connect the cap member connected to another end of the fragrance container" be changed to – connecting the injecting device to the cap member--.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Schuehrer et al (USP 6,705,541).

Schuehrer '541 teaches a fragrance dispenser or package comprising porous element impregnated with an aromatic carrier substance, which may be compressed to release or emit the fragrance. See col. 3, lines 20-46.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 are rejected under 35 USC 103(a) as being unpatentable over Schuehrer et al '541.

As discussed above, Schuehrer teaches the concept of releasing fragrance vapor through pores of a material. The reference do not specifically mention the relative diameter of the pores to that of the aromatic substance; however, since the release rate is a function of the thickness, porosity and the concentration gradient of the active aromatic compound, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the fragrance releasing material by changing the size of the pores depending on the release or diffusion rate desired.

Claim 7: The references do not specifically mention the fragrance containing material may comprise the articles listed in claim 7; however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the fragrance containing material by changing its shape and size so that the material may be part of the desired article such as articles listed in claim 7.

***Allowable Subject Matter***

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Applicant's Remarks/Arguments***

Applicant's arguments filed 07/02/04 have been fully considered but they are not persuasive.

With respect to Schuehrer the applicant argues that the reference emits fragrance only when a tab is opened and that the fragrance dispenser continuously

emits fragrance once the dispenser is deformed and returns to its normal shape. The applicant contends that Schuehrer does not anticipate the present intention.

The Examiner contends that Schuehrer teaches a fragrance dispenser which may be comprised of elastic and contains a porous element. See col. 4, lines 31-49. Further, as shown at Fig. 14A device may be deformed or stretched to release the fragrance.

With respect to claims 5-7, it would have been obvious to one of ordinary skill in the art to have attached the fragrance device to a desired article as a matter of obvious design choice.

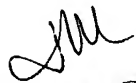
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abraham Bahta whose telephone number is (571) 272-1352. The examiner can normally be reached on Monday - Friday; 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571) 272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A. Bahta  
09/14/04



**JENNIFER MCNEIL**  
**PRIMARY EXAMINER**